IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Appeal From Order No. 423 of 2006
With
Appeal From Order No. 450 of 2006

Date of decision: 3rd August, 2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date 3.8.2006.

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 423 of 2006

The New India Assurance Company Ltd.,
Haldwani (Nainital),
through its Divisional Manager,
Divisional Office Nainital Road,
Haldwani, Distt. Nainital ……. Appellant

Versus

1. Sri Ram Bansal s/o Shri Ram Nath,
   R/o Mohalla Ghosiyan,
   Tehsil and Distt. Haridwar.
2. Smt. Sneh Lata w/o Sri Ram Bansal,
   R/o Mohalla Ghosiyan,
   Tehsil and District Haridwar.
3. Sri Kewal Krishna Kalara,
   S/o Sri Moti Ram, R/o Maheedpur,
   Distt. Ujjen (M.P.)
   Owner of Bus No. M.P. 09S/2380 (deceased)
   but Substituted his successor as respondents
   before the claim Tribunal as:-

1/1 Rohit Kalara s/o Late Sri Kewal Krishna Kalara,
R/o M/s Sri Moti Travelers Bus Stand Maheedpur City,
District Ujjen (M.P.)

1/2 Vineet Kalara s/o Late Kewal Krishna Kalara,
R/o M/s Krishna Automobile, Bus Stand Maheedpur City,
District Ujjen (M.P.)

1/3 Sri Sahilendra Kalara s/o Late Kewal Krishna Kalara,
R/o 31/1 Darji Barbal Tilakpath, Maheedpur City,
District Ujjen (M.P.) …… Respondents

Sri P.C. Maulekhi, Advocate for the appellant.
Sri Lok Pal Singh, Advocate for respondents 1 and 2.

With

Appeal From Order No. 450 of 2006

1. Sri Ram Bansal s/o Shri Ram Nath,
2. Smt. Sneh Lata w/o Sri Ram Bansal,
   Both R/o Mohalla Ghosiyan, Jwalapur,
   Tehsil and District Haridwar. ……. Appellants

Versus

1. Sri Kewal Krishna Kalara,
   S/o Sri Moti Ram, R/o Maheedpur,
   Distt. Ujjen (M.P.)
   (Owner Vehicle Bus No. M.P. 09S-2380) (deceased)

1/1 Rohit Kalara s/o Late Sri Kewal Krishna Kalara,
R/o M/s Srimoti Travelers Bus Stand Maheedpur City,
District Ujjen (M.P.)
1/2 Vineet Kalara s/o Late Kewal Krishna Kalara,
R/o M/s Krishna Automobile, Bus Stand Mahidpur City,
District Ujjen (M.P.)
1/3 Sri Sahilendra Kalara s/o Late Kewal Krishna Kalara,
R/o 31/1 Darjibakhal Tilakpath, Maheedpur City,
District Ujjen (M.P.)
2. The New India Assurance Company Ltd.,
through its Divisional Manager,
Ranipur Mod, Haridwar,
Tehsil and Distt. Haridwar. …… Respondents

Sri Lok Pal Singh, Advocate for the appellants.
Sri P.C.Maulekhi, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

This common judgment shall govern the disposal of A.O. No. 450 of 2006 also.

2. The impugned Award dated 12.05.2006 passed by Motor Accident Claims Tribunal, Haridwar in Motor Accident Claim Case No. 94 of 2004 has given rise to the filing of these two appeals – A.Os. 423 of 2006 and 450 of 2006.

3. A.O. No. 423 of 2006 is at the behest of the insurer of the offending vehicle truck, whereas A.O. No. 450 of 2006 is at the behest of the claimants for enhancement of the compensation awarded by the Tribunal.

4. Claimants Sri Ram Bansal and Smt. Sneh Lata, the unfortunate parents of deceased Rajnish, claimed compensation of Rs. 41,70,000/-

for his death in the motor accident when on 15.06.2000 his scooter was dashed by the offending vehicle-bus bearing registration No. MP-09S-2380 resulting in serious injuries to Rajnish, who succumbed to those injuries on his way to the Government Hospital, Haridwar. On the report about the accident, a criminal case was registered against the driver of the bus at Crime No. 253 of 2000 for the alleged commission of the offence punishable U/Ss 279, 338, 304- A and 427 I.P.C. The claimants pleaded that their son Rajnish, on the date of the accident, was aged about 27 years and used to earn Rs. 8000/- per month from his business of food-grain trading, property dealing and cane crusher.

5. The owner of the vehicle, who after his death was represented by his legal representatives, did not contest the claim and remained ex parte before the Tribunal.

6. The insurer of the offending vehicle (appellant in A.O. No. 423 of 2006) contested the claim and while admitting that the offending vehicle-bus bearing registration No. MP-09S-2380 was insured with this Insurance Company for the period between 22.03.2000 to 31.03.2001, denied its liability to pay compensation to the claimants on the plea that the driver of the bus was not holding a valid driving license and the bus was being plied in breach of the policy conditions.

7. The Tribunal, on a close scrutiny of the evidence led by the parties, held that claimants' son Rajnish sustained injuries in the motor accident on 15.06.2000 and succumbed to those injuries on his way to the hospital; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle bus; and the insurer of the bus was liable to pay compensation to the claimants.

8. On the basis of the evidence led by the claimants about the income of the deceased including his Income Tax Return for the Assessment Year 1999-2000, the Tribunal assessed the income of the deceased at Rs.65,000/- per annum. By deducting 1/3rd of the said

amount as his personal expenses, the claimants' dependency was assessed at Rs. 43,667/- per annum. Considering that claimants Sri Ram Bansal was aged about 53 years and other claimant Smt. Sneh Lata was aged about 48 years, the Tribunal selected the multiplier of 11. By multiplying the annual dependency of Rs. 43,677/- by multiplier of 11, the compensation was worked out at Rs. 4,80,333/-. The Tribunal awarded further sum of Rs.2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate. Thus, a total sum of Rs. 4,84,833/- was awarded as compensation to the claimants for the death of their son Rajnish in the motor accident.

9. The Tribunal further directed payment of interest @ 6% per annum on the amount of compensation from the date of the application i.e. 22.12.2000, if the amount of compensation is not paid within a period of one month from the date of the award. It is not in dispute that the Insurance Company has not paid the amount of compensation to the claimants within the stipulated period of one month and as such, has become liable to pay interest on the amount of compensation @ 6% per annum from the date of application.

10. Sri P.C. Maulekhi, the learned counsel for the appellant Insurance Company in A.O. No. 423 of 2006 submitted that as the appellant-Insurance Company was granted permission U/s 170 of the Motor Vehicles Act, the quantum of compensation is being challenged in this appeal. The learned counsel for the Insurance Company further submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 65,000/- per annum, though the evidence of the claimants in that behalf is not trustworthy. It was further submitted that that multiplier of 11 selected by the Tribunal is on the higher side.

11. Sri Lok Pal Singh, the learned counsel for the claimants / appellants in A.O. No. 450 of 2006, on the other hand, supported the selection of multiplier of 11 by the Tribunal, but sought enhancement of the compensation on the ground that the Tribunal has erred in

assessing the income of the deceased at Rs. 65,000/- per annum only, as the income of the deceased, disclosed in the Income Tax Return for the Assessment Year 2000-2001 (the year of the accident), was Rs. 76,782/-.

12. In a motor claim case what is important is that the compensation to be awarded by the Court should be just and proper. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during the period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court just try to assess as best as it can the loss suffered."

13. The Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731** has held that in a case where the parents of the deceased are the claimants, the multiplier of 10 is appropriate.

14. Reverting to the case in hand, the Tribunal has selected the multiplier of 11 and has assessed the income of the deceased at Rs. 65,000/- per annum on the basis of his Income Tax Return for the Assessment Year 1999-2000 and thereby, has assessed the compensation at Rs. 4,80,333/-. The learned counsel for the Insurance Company vehemently argued that the multiplier of '10' ought to have been selected by the Tribunal. The learned counsel for the claimants, with equal vehemence, submitted that the Tribunal ought to have assessed the income of the deceased at Rs. 76,782/- per annum on the basis of his Income Tax Return for the Assessment Year 2000-2001.

15. Even if the income of the deceased is taken at Rs. 76,782/- per annum and the dependency of the claimants (who are parents of the deceased) is assessed at Rs. 48,000/- per annum and the same is multiplied by the multiplier of '10' [following the dictum of the Apex Court in the case of Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another reported in (2003) 8 SCC 731], the compensation works out to Rs. 4,80,000/-.

16. Since there is virtually no difference in the amount of Rs. 4,80,000/- assessed by us in the above para and the amount of Rs. 4,80,333/- awarded by the Tribunal, we do not find any scope for interference either in the appeal filed by the Insurance Company challenging the quantum of compensation or in the appeal filed by the claimants seeking enhancement of the compensation.

17. In our considered view, the amount of Rs. 4,84,833/- awarded by the Tribunal, in the facts and circumstances of the case, is just and proper compensation. It can neither be termed as 'Inadequate' so as

to warrant enhancement nor it is ‘Excessive’ so as to warrant any reduction.

18. For the foregoing reasons, both the appeals A.O.s Nos. 423 of 2006 and 450 of 2006 fail and are hereby dismissed.

19. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
03.08.2006 03.08.2006

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Money Withdrawal App. No. 11962 of 2006
In
Appeal from Order No. 423 of 2006

The New India Assurance Company Ltd. …… Appellant

Versus

Sri Ram Bansal & others. …… Respondents

Mr. P.C. Maulekhi, Advocate for the appellant.
Mr. Lok Pal Singh, Advocate for respondents Nos. 1 & 2 (claimants).

Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Mr. P.C. Maulekhi, Advocate for the appellant Insurance Company.

Mr. Lok Pal Singh, Advocate for respondents Nos. 1 & 2 (claimants).

2. The appeals filed by the appellant Insurance Company and the claimants were finally decided vide judgment dated 03.08.2006, whereby both the appeals - A.O. No. 423 of 2006 and A.O. No. 450 of 2006 were dismissed and the award passed by the Tribunal was affirmed.

3. The claimants, now, have filed this application for a direction to the Registry to remit the amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) deposited by the appellant Insurance Company as mandatory deposit under Section 173 of the Motor Vehicles Act to the concerning Claims Tribunal.

4. On due consideration, the Registry is directed to remit the amount of Rs. 25,000/- (Rupees Twenty Five Thousand only), deposited by the appellant Insurance Company as mandatory deposit while filing the appeal against the Award, to the concerning Claims Tribunal immediately.

5. With the above order, CLMA No. 11962 of 2006 stands disposed of.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

21.09.2006 21.09.2006

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